1002

SUPREME COURT OF THE UNITED STATES.

No. 94.

JOHN ROUTH, PLAINTIFF IN ERROR,

VS.

FRANCIS H. HOOK.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Petition,	1	3
Draft and protest,	3	4
Citation,	4	6
Marshal's return,	5	6
Rule on plaintiff, and marshal's return,	6	6
Plaintiff's answer,	7	7
Rule on plaintiff made absolute,	8	8
Notice of trial,	8	8
Judgment,	9	8
Petition for writ of error,	10	9
Bond to prosecute writ of error,	11	10
Judge's order,	11	10
Clerk's certificate,	12	11
Writ of error,	13	11
Citation,	17	12
Service of citation,	18	13

S. D. Langtree, Print.

CIRCUIT COURT OF THE UNITED STATES,
Ninth Circuit in and for the Eastern District of Louisiana.

Be it remembered, that on this seventh day of March, in the year of our Lord one thousand eight hundred and forty, came into the Circuit Court of the United States, for the Eastern District of Louisiana, Francis H. Hook, by A. K. Josephs, his attorney, and filed the following petition, to wit:

The petition of Francis H. Hook, who avers that he is a citizen of the State of Mississippi, residing in Fort Adams, in said State, respectfully shews: that John Routh, citizen of the State of Louisiana, residing in the parish of Concordia, in said State, and within the jurisdiction of this honorable court; and that the said John Routh is justly indebted unto your petitioner, in solido, in the sum of four thousand, six hundred and eleven 36-100 dollars, with interest thereon, at the rate of eight per cent. per annum, the legal interest in the State of Mississippi, where the debt sued for was contracted, from 4th day of January, A. D. one thousand eight hundred and forty, until paid, and dollars costs of protest; for this, that petitioner is holder and owner of a bill of exchange in the words and figures following, to wit:

Natchez, 28th January, 1839.

Exch'ge for $460 36-100.—No. 439.

On the 1st January, after date of this first of exchange, (second of the same tenor and date unpaid,) pay to the order of John Routh, Esq., forty-six hundred and eleven, 36-100 dolls., value received, and charge the same to account.

Signed, W. & R. FERRIDAY & Co.

To BENNETT, FERRIDAY & Co., New Orleans.

Said bill was drawn by the said W. & R. Ferriday & Co., on the day and at the place appearing on its face, to wit, at Natchez, Mississippi, on the 28th day of Jan'y, A. D. one thousand eight hundred and thirty-nine, and was afterwards, to wit, on the by the said John Routh, endorsed, and afterwards by one M. E. Saunders, and accepted by Bennett, Ferriday & Co. Your petitioner further shows, that at maturity, to wit, on the fourth day of January, A. D., eighteen hundred and forty, the said bill was duly protested for non-payment, by A. Mazureau, a Notary Public, in New Orleans, duly commissioned and qualified; and that the said John Routh, by the said notary, duly notified thereof; all which will appear by reference to said bill, and the protest thereof annexed for reference. Petitioner alledges further, that the said John Routh, though amicably requested, has neglected to pay the amount, or any part thereof, for which he is indebted as aforesaid; wherefore, petitioner

prays, that the said John Routh be cited to appear and answer this petition, and after due proceedings, be condemned, in solido, to pay petitioner the aforesaid sum of four thousand six hundred and eleven 36-100 dollars, with interest, at the rate of 8 per cent per annum, until paid, $4 50 dollars costs of protest, and costs of suit, and for general relief, as in duty bound, &c.

(Signed,) A. K. JOSEPHS,
Attorney for Petitioner.

Interrogatories on facts and articles to be answered, under oath, by the defendant.

1st. Are not the facts stated in the foregoing petition ; if not, which of them is untrue?

(Signed,) A. K. JOSEPHS, *for Pet.*

And on the same day, to wit, the seventh day of March, eighteen hundred and forty, the following draft, and protest, and notices, were filed.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest, be it known, that on this fourth day of January, in the year one thousand eight hundred and forty, at the request of the Union Bank of Louisiana, holder of the original draft, whereof a true copy is on the reverse hereof written, I, Adolphe Mazureau, a Notary Public, in and for the city and parish of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, presented said draft, at the counting house of Bennett, Ferridays & Co., the acceptors thereof, and demanded payment of its contents, but was answered by a clerk, that the same could not be paid; whereupon, I, the said Notary, at the request aforesaid, did protest as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges and interest, suffered or to be suffered, for want of payment of the said draft. Thus done and protested, in the presence of John Cragg and George A. Jenkins, witnesses.

In testimony whereof, I grant these presents under my signature, and the impress of my seal of office,
[L. S.] at the city of New Orleans, on the day and year first above written.

(Signed,) A. MAZUREAU, *Not. Pub.*

Natchez, 28th Jan'y, 1839.

Exch. for $4,611 36-100.

On the first of January, after date of this first of exchange, (second of the same tenor and date unpaid,) pay to the order of John Routh, Esq., forty-six hundred and eleven 36-100 dollars, value received, and charge the same to account.

(Signed,) W. & R. FERRIDAY & Co.

To BENNETT, FERRIDAY & Co.

(Endorsed,) John Routh, by his attorney, William Ferriday, M. E. Saunders, George Lee.

BENNETT, FERRIDAY & Co.

Notice.

I, the undersigned notary, do certify that the parties to the draft whereof a true copy is above written, have been duly notified of the protest thereof, by letters to them by me written and addressed, dated on the day of the said protest, and served on them respectively, in the manner following, viz: W. & R. Ferriday & Co., Natchez, Mississippi, John Routh, Natchez, Mississippi; again, John Routh, parish of Concordia, Louisiana, and M. E. Saunders, Woodville, Mississippi, by information of the acceptors; which notices were, by me, the Notary, put into the post office of this city, on the day of said protest; and on the 6th instant, the notice for George Lee was given to himself. In faith whereof, I have hereunto signed my name, together with John Cragg and George A. Jenkins, witnesses, of New Orleans, this 6th day of January, one thousand eight hundred and forty.

A. MAZUREAU, *Not. Pub.*

Signed, J. CRAGG,
GEORGE A. JENKINS.

A true copy of the original.

(Signed,) A. MAZUREAU, *No. P'c.*

New Orleans, January 5th, 1841.

And afterwards, to wit, on the same day, the 7th of March, the following citation was issued:

The President of the United States of America, to the Marshal of the Eastern District of Louisana, or his lawful deputy, greeting:

F. H. Hook,
vs.
John Routh. } No. 608.

To Mr. John Routh.

You are hereby commanded to summon John Routh, and you, John Routh, are hereby cited to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver his answer to the same in the office of the clerk of the Circuit Court of the United States, Ninth Judicial Circuit, and Eastern District of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every twenty miles the defendant's residence is distant from the place where the Court is held.

Witness the Honorable R. B. Taney, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, in the said Eastern District of Louisiana, this seventh day of March, in the year of our Lord one thousand eight hundred and forty, and of the independence of the United States of America, the 54th year.

(Signed,) DUNCAN N. HENNEN, *Clerk.*

Marshal's Return.

Received, Wednesday, 1st day of April, 1840; and on Thursday, the 2d day of April, 1840, I served a copy of plaintiff's petition on the within named defendant, John Routh, in person, in the parish of Concordia, La., three hundred and seventy miles from Orleans.

(Signed,) M. MARIGNY, *U. S. Marshal.*
By JOHN N. DONOHEW, *Dept. U. S. M.*

And afterwards, to wit, on the twentieth day of April, eighteen hundred and forty, the following rule was recorded:

Circuit Court of the United States,
Ninth Circuit and Eastern District of Louisiana.

Monday, April 20th, 1840.

Present, the Honorable John McKinley, presiding Judge, P. K. Lawrence, District Judge.

Francis H. Hook,
vs.
John Routh. } No. 608.

On motion of Isaac T. Preston, Esq., of counsel for the defendant, it is ordered that the plaintiff shew cause, on Saturday, the 25th

inst., at 10 o'clock, A. M., why sixty days should not be allowed to file this answer on oath, to the interrogatories propounded to them.

UNITED STATES' CIRCUIT COURT,
Ninth Circuit, Eastern District of Louisiana.

Clerk's Office.

I do hereby certify the above to be a true copy of the original record in this office.

Witness my hand, and the seal of said court, at
[L. S.] New Orleans, this 20th day of April, 1840.
(Signed,) D. N. HENNEN, *Clerk.*
By FOYGNET, *Dept. Clerk.*

Marshal's Return.

Rec'd, 20th April, 1840. Returned, 21st April, same year. Served a copy of the within on A. K. Josephs, in person.

(Signed,) MARIGNY,
Per W. M. STILES, *D'y U. S. Marshal.*

And afterwards, to wit, on the 21st day of April, 1840, the following answer was filed:

To the honorable Circuit Court of the United States, of the ninth circuit, in and for the eastern district of Louisiana.

The exception, plea and answer of John Routh to the petition filed in this honorable court against him, by Francis H. Hook, respectfully shows:

That plaintiff's suit should be dismissed, because on the face of his petition no cause of action is shown against your respondent, because M. E. Saunders, from whom the bill sued upon appears to have been endorsed and assigned to plaintiff, could not sue your respondent in this honorable court; and because he could not sue the drawers or acceptors of the bill sued upon in this honorable court; and because he desires title to the instrument sued upon, from persons who are not liable to the jurisdiction of this honorable court, in this suit.

Your respondent denies, further, all the allegations in plaintiff's petition contained, material, to charge him with plaintiff's demand; and prays judgment in his favor against said demand, and for all costs and damages.

And your respondent prays for all further and other relief which justice, equity and the nature of the case requires, and a trial by a jury, as in duty bound, &c.

(Signed,) ISAAC T. PRESTON,
Attorney for def't.

And afterwards, to wit, on the 25th April, 1840, the following entry on record was made:

The rule heretofore taken in this case on plaintiff, to shew cause why the defendant should not be allowed sixty days to file his answer on oath to interrogatories propounded to him, came on this day before the court; A. K. Josephs, Esq., appearing for the plaintiff, and Isaac T. Preston, Esq., appearing for the defendant; whereupon, it was ordered, that said rule be made absolute; that the defendant be allowed sixty days, and no more, to file his answer.

And afterwards, to wit, on the 25th day of January, in the year of our Lord, 1841, the following notice of trial was filed:

United States Circuit Court, for the ninth judicial circuit and eastern district of Louisiana.

F. H. Hook, *vs.* John Routh. } No. 608.

The defendant in case is hereby notified, that this case is fixed for trial for Saturday, the 30th day of January, A. D. 1841, at 10 o'clock, A. M. By order of the court.

Witness my hand and the seal of the court, this 25th [L. S.] day of January, A. D. 1841, and of the independence of the United States the sixty-fifth year.

(Signed,) DUNCAN N. HENNEN, *Clerk.*
By FRANCIS A. FOYGNANT, *Dep't.*

To I. T. Preston.

Marshal's Return to the above.

Received 26th January, 1841, and same day served a copy of the within on I. T. Preston, Esq., in person.

(Signed,) MARIGNY,
Per Wm. K. Stiles, Dept. U. S. Marshal.

And afterwards, to wit, on the thirtieth day of January, 1841, the following judgment was entered of record:

Francis H. Hook, *vs.* John Routh. } No. 608.

This cause came on this day for trial; A. K. Josephs, Esq., appearing for the plaintiff, the defendant not appearing in person, or

by attorney; when the exceptions in the defendant's answer being overruled by the court, thereupon came a jury, to wit, N. Wittz, James Allen, James Morney, N. Journanon, J. Webber, James Williamson, Thomas Layton, P. Pailhes, A. Clarii, Samuel Stewart, P. M. Tourne and Jean Duforn, who were sworn, well and truly to try the issue joined between the parties, and a true verdict according to the evidence; who, having heard the evidence from their seats, delivered the following verdict, which was ordered to be recorded, and is in the words and figures following, to wit:

Verdict for Plaintiff.

For four thousand six hundred and eleven dollars and thirty-six cents, with interest of eight per cent. from January fourth, eighteen hundred and forty.

(Signed,) SAMUEL STEWART, *Foreman.*

New Orleans, January thirtieth, eighteen hundred and forty-one.

Whereupon, it is considered by the court, that judgment be entered up in favor of the plaintiff and against the defendant, John Routh, for the sum of four thousand six hundred and eleven dollars and thirty-six cents, with interest of eight per centum per annum, from the fourth of January, eighteen hundred and forty, until paid; for six dollars, costs of protest and costs of suit to be taxed.

Judgment entered 30th January, 1841.

Judgment signed 6th February, 1841.

(Signed,) P. K. LAWRENCE, *U. S. Judge.*

And on the 30th of January, 1841, the following agreement was filed:

HOOK, *vs.* ROUTH.

The power of attorney from Routh to Ferriday to endorse the bill sued on, is in evidence.

(Signed,) JOHN C. LARU, *for Routh.*

And on the 4th February, 1841, the following petition for writ of error, and bond, and judge's order endorsed, were filed:

To the honorable the Circuit Court of the United States, 9th circuit eastern district of Louisiana.

The petition of John Routh respectfully shows, that he has been advised that there is error in the judgment by this honorable

court, rendered against him at the suit of Francis H. Hook, and he therefore prays, that a writ of error may issue herein to the Supreme Court of the United States; and that on his giving bond with James H. Leverich, security, conditioned as the law directs, execution may be charged until a final decision by the said court of the matters in question, as in duty, &c.

(Signed,) JOHN LARU, *for Plf. in Er.*

Bond.

SUPREME COURT OF THE UNITED STATES OF AMERICA.

JOHN ROUTH, *vs.* FRANCIS H. HOOK. } In error.

Know all men by these presents, that we, John Routh and James H. Leverich, residing within the jurisdiction of this honorable court, are held and firmly bound unto Francis H. Hook, his heirs, executors, administrators and assigns, in the sum of eight thousand dollars, to be paid to the said Francis H. Hook, his heirs, executors, administrators and assigns, to which payment, well and truly to be made, we bind ourselves, and each of ous, jointly and severally, and our, and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated at New Orleans, this fourth day of February, 1841.

Whereas, the above mentioned John Routh hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the Circuit Court of the United States, for the ninth circuit, eastern district of Louisiana: Now, therefore, the condition of this obligation is such, that if the above named John Routh shall prosecute his said writ of error to effect, and answer all damages and costs, if he fail to make good his plea, then this obligation shall be void, otherwise of full effect and virtue.

(Signed,) For JOHN ROUTH,
By ISAAC T. PRESTON,
his Attorney.

Sealed and delivered in presence of
J. H. LEVERICH.

Judge's Order.

"Be it so."

(Signed,) P. K. LAWRENCE, *U. S. Judge.*

Clerk's office of the Circuit Court of the United States, ninth judicial circuit, holding sessions in and for the eastern district of Louisiana.

I, Duncan N. Hennen, Clerk of the Circuit Court of the United States, 9th circuit and eastern district of Louisiana, do hereby certify, that the foregoing twelve pages contain a full, faithful and true transcript of the records and proceedings, together with all the proceedings and evidence adduced on the trial of the case of Francis H. Hook, vs. John Routh, so far as the same remain on file in the said court.

In testimony whereof, I have hereunto signed my name and affixed the seal of the said court, at the city of New Orleans, this ninth day of December, in the year [L. S.] of our Lord one thousand eight hundred and forty-one, and sixty-sixth year of the independence of the United States.

DUNCAN N. HENNEN, *Cl'k.*

Judge's Certificate.

I, Theodore H. McCaleb, Judge of the District Court of the United States, for the eastern district of Louisiana, and one of the Judges of the Circuit Court of the United States for the eastern district of Louisiana, do hereby certify, that Duncan N. Hennen is the Clerk of the Circuit Court of the United States for the ninth circuit, eastern district of Louisiana; and that due faith and credit are due to his acts as such.

Witness my hand and seal, this 9th day of December, in [L. S.] the year of our Lord eighteen hundred and forty-one.

THEO. H. McCALEB, *U. S. Judge.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the Judges of the Circuit Court of the United States, for the ninth circuit and eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Circuit Court, before you, or some of you, between Francis H. Hook, a citizen of Mississippi, residing at Fort Adams, and John Routh, a citizen of the State of Louisiana, residing in the parish of Concordia, a manifest error hath happened, to the great damage of the said John Routh, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly

and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this second Monday of January, in the year of our Lord one thousand eight hundred and forty-one.

[L. S.]

DUNCAN N. HENNEN, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES.

FRANCIS H. HOOK, *vs.* JOHN ROUTH. } No. 608.

Copy a writ of error, lodged in pursuance of the statute of the United States in such case made and provided, for the above named, and also defendant in error.

(Signed,) J. C. LARUE,
Attorney for plaintiff in error.

A true copy from the original endorsement.

DUNCAN N. HENNEN, *Cl'k.*

THE UNITED STATES OF AMERICA,

To Francis H. Hooke, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States, ninth circuit, in and for the eastern district of Louisiana, wherein John Routh is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this eighth day of November, in the year of our Lord one thousand eight hundred and forty-one.

[L. S.]

THEO. H. McCALEB, *U. S. Judge.*

1008

John Routh vs. *Francis H. Hook.* ~~13~~

Circuit Court U. S., 9th Circuit Eastern District of La.

F. H. Hook, *vs.* John Routh. } No. 608.

Marshal's Return.

Received November 8th, 1841, and on the same day I served a copy of the within citation of appeal on A. K. Josephs, Esq., in person, at New Orleans.

J. P. WALDEN, *Dep. U. S. Marshal,*
For M. MARIGNEY, *U. S. Marshal.*

Filed 27th Jan'y, 1842.